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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 48.

WILLIAM H. ANDREWS, PLAINTIFF IN ERROR,

vs.

EASTERN OREGON LAND COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

REPLY TO SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

ALDIS B. BROWNE,
ALEXANDER BRITTON,
Counsel for Defendant in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23572

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I.

The diagrams made in the U. S. Land Department showing the lateral limits of all railroad and wagon road grants are part of the official record; are all made by accurate measurement from the maps of location and by one uniform consistent method of measurement used since 1852. They are the basis for adjustment of all such grants; titles to millions of acres are made thereon. The field notes of survey or other evidence in respect of the swamp land grant are all examined by subordinates and clear lists therefrom submitted to the Secretary of the Interior. His approval thereof is conclusive, yet that officer never examines the original proofs. This is but an illustration from many which might be given showing his final executive action is necessarily based in fact and in legal effect upon the work of subordinates, identical

with that involved in the ascertainment of the lateral limits of railroad and wagon road grants. The objection here made could be equally urged against all executive action requiring the detail work of subordinates as the basis therefor.

II.

Under existing practice, which can most properly be termed ancient, the General Land Office never cancels any man's entry until after formal decision, notice thereof, and opportunity for appeal to the Secretary of the Interior. The exact facts shown by the Department record in the present case are that on October 22, 1890, the Commissioner of the General Land Office held the entry of plaintiff in error for cancellation. Of that action he was duly notified and took an appeal to the Secretary of the Interior, by whom on March 23, 1901, the Commissioner's decision was affirmed. The entry was thereafter and in accord with such final decision canceled on June 15, 1901, and the land some time thereafter patented to defendant in error under the wagon road grant.

The statement on our former brief that the Department record failed to disclose that plaintiff in error had raised this point before the Department was based upon misinformation. Inspection of the Secretary's decision *supra* (whereof we present certified copy and print as an appendix hereto) shows that the plaintiff in error did make this point, and that the Secretary ruled thereon, finding as a fact that such contention was incorrect and expressly affirming the correctness of the official diagram showing this land to be actually within the limits of the grant.

Respectfully submitted,

ALDIS B. BROWNE,
ALEXANDER BRITTON,
Counsel for Defendant in Error.

APPENDIX.

25–500.

DEPARTMENT OF THE INTERIOR, *March* 23, 1901.

WILLIAM H. ANDREWS
vs.
EASTERN OREGON LAND CO.

The Commissioner of the General Land Office.

SIR: The plaintiff, William H. Andrews, has appealed from your office decision of October 22, 1900, holding for cancellation his cash entry of the N. ½ of S. W. ¼ and S. E. ¼ of S. W. ¼ of sec 7, T. 1 N., R. 17 E., The Dalles, Oregon, land district, for conflict with the grant to The Dalles Military Road Company.

By act of Congress of February 25, 1867 (14 Stat., 409), a grant of lands was made to the State of Oregon for the purpose of aiding in the construction of a military wagon road from Dalles City, on the Columbia river, to a point on Snake river opposite Boise City, in Idaho Territory. The lands granted were the "alternate sections of public lands, designated by odd numbers, to the extent of three sections in width on each side of said road." The grant was subsequently conferred by the State upon The Dalles Military Road Company. The line of said road was definitely located November 1, 1869, and a withdrawal of the lands ordered December 14, 1871.

On December 22, 1893, William H. Andrews was allowed to make cash entry of the lands in controversy under the act of September 29, 1890 (26 Stats., 406), upon his showing of improvements with settlement made thereon May 1, 1888, under a contract with the Northern Pacific Railroad Company made in April, 1882.

The Eastern Oregon Land Company filed a protest against the entry of Andrews and asked its cancellation. It was alleged, in said protest, that on June 23, 1869, the Governor of the State of Oregon certified to the [illegible] in his office of a plat or map of said road, and that upon examination he found that the road had been constructed in accordance with the terms of the granting act; that on May 31, 1876, The Dalles Military Road Company conveyed the grants involved, with other lands, to one Edward Martin; that on August 11, 1884, said Martin's heirs conveyed the same to the defendant company, and that said conveyances were made prior to the settlement of Andrews.

On June 30, 1900, your office directed the local officers to notify Andrews that he would be allowed sixty days within which to show cause why his cash entry should not be canceled for conflict with the grant of The Dalles Military Road Company. In response to said rule, Andrews filed his own affidavit, together with the affidavits of two other parties, in which it is claimed that by measurements actually made the lands embraced in his entry are outside the three-mile or primary limits of the grant. He also filed a plat purported to show the line of the road and the limits of the grant, and claims that two maps of said route have been filed by the company, by the first of which the lands in controversy were shown to be outside the limits of the grant, but by the amended one, filed January 15, 1872, they were shown to be within said limits.

On October 22, 1900, it was said in your office decision that, "according to the official diagram on file in this office, showing the limits of the grant, and which must govern, the tracts in question are within the primary limits of said grant," and Andrews' entry was held for cancellation. The case of Hardman *vs.* The Dalles Military Wagon Road Company (23 L. D., 94), was cited as authority for said decision. It was held in that case that "a diagram showing the limits of a wagon road grant that has stood unquestioned for a long

term of years, and under which rights have vested, will not be disturbed."

Andrews has appealed to the Department, and claims, among other things, that it was error to hold that either the company or the Department "has the right to go beyond the limits fixed by the granting act to adjust the exterior bounds of the said grant."

From an examination of the records in your office it would appear that but one map of definite location of the company's line of road has been filed, and that it has been recognized by the company and the Government in adjusting the grant. This map was filed long prior to the date at which Andrews claims that his rights attached, and by it the lands in controversy are shown to be within the limits of the grant. Moreover, the lands had, prior to the attachment of said rights, been conveyed to the defendant company.

Following departmental decision in the Hardman case, *supra*, your office decision, holding Andrews' entry for cancellation, is affirmed.

The papers are herewith returned.

Very respectfully,

E. A. HITCHCOCK,
Secretary.